IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 288/2005
KAILASH CHAND SHARMA Vs. DWARKA & ANR.

DATE: 08.03.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Jai Prakash Gupta for the petitioner.
Mr. Ashwini Kumar Sharma, PP for the State.
Mr. Arvind Sharma for
Mr. Anurag Sharma for the respondent No.1

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The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the judgment dated 11.02.2005 passed by the District & Sessions Judge, Karauli in Criminal Revision No. 58/2003, whereby the Revisional Court while allowing the criminal revision filed by the respondent No.1 Dwarka, quashed and set-aside the order of cognizance dated 15.11.2002 passed by the Additional Chief Judicial Magistrate, Karauli in Criminal Regular Case No. 953/2002 observing therein that mandatory provisions of Section 138(B) of the Negotiable Instruments Act have not been followed as the notice was required to be issued within the stipulated period of 30 days and further the complaint has been filed prior to expiry of 15 days and without waiting for 15

days, only after 14 days the petitioner filed a private complaint. Considering the submissions made on behalf of the non-petitioner, the criminal revision filed by the non-petitioner Dwarka was allowed and the cognizance order has been quashed and set-aside.

Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Narsingh Das Tapadia Vs. Goverdhan Das Partani and anohter, reported in AIR 2000 SC 2946,** wherein the Hon'ble Supreme Court has held that “Mere presentation of the complaint in the Court cannot be held to mean, that its cognizance had been taken by the Magistrate. If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the criminal liability for the offence committed.”

Upon perusal of the aforesaid judgment rendered by the Hon'ble Supreme Court, here in the instant case also, before expiry of 15 days the complaint has been filed after 14 days and merely because it was presented one day before, the same

cannot be liable to be dismissed on this count alone. Further the Revisional Court has not care of factual aspect with regard to legal notice issued by the petitioner under Section 138(B) of the Negotiable Instruments Act.

Having considered the rival submissions of the respective parties and after going through the judgment rendered by the Hon'ble Supreme Court in the aforementioned case of **Narsingh Das Tapadia (supra),** I find it a fit case which requires interference by this Court while exercising revisionary powers as the Revisional Court has committed an error while passing the impugned judgment dated 11.02.2005.

Accordingly, the impugned judgment dated 11.02.2005 passed by the Revisional Court i.e. the District & Sessions Judge, Karauli is herewith quashed and set-aside and the matter is remitted back to the Revisional Court for fresh adjudication after appreciation of the law laid down by the Hon'ble Supreme Court as aforesaid and in accordance with the provisions as stipulated in Section 138 of the Negotiable Instruments Act. Both the parties are directed to remain present before the Revisional Court on 28.03.2007.

The revision petition stands allowed. Record be sent back forthwith.

(K.S. RATHORE),J.

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